IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 279 of 2002.

Decided on: 18.4.2007.

Govind Singh

… … … Petitioner.

Versus

State of H.P. & ors.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? *Yes.*

For the petitioner:	**Mr. P.C. Sharma, Advocate.**
For Respondents No.1& 2:	**Mr. M.S. Chandel, Advocate General with Ashutosh Burathoki, Addl. Advocate General.**
For Respondent No.3:	**Mr. A.K. Bansal, Advocate.**

Rajiv Sharma, Judge (Oral):

The petitioner has sought directions to respondents to release his pension w.e.f. 1.4.2000 with interest 24% per annum.

Mr. Ashutosh Burathoki, during the course of hearing of this petition has drawn my attention to para 11 of the reply and has submitted that respondent No.3 has been directed to make all payments of retrial benefits to all the retirees including the petitioner. He further submits that the pension arrears to the tune of Rs.83,349/- as well as payment of

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Whether reporters of local papers may be allowed to see the judgment? Yes.

commutation amounting to Rs.1,36,148/- had already been received by the petitioner on 23.1.2002 and thereafter the petitioner is getting his pension regularly every month. Mr. P.C. Sharma does not dispute the submission made by Mr. Ashutosh Burathoki, but submits that as per para 11 of the reply filed by respondent No.3, a sum of Rs.62,540.10 is likely to be recovered from the petitioner on the basis of audit objection regarding his fixation of salary w.e.f. 1.1.1978 to 31.3.2001. It is also stated by the respondents in reply that there was embezzlement charge against the petitioner as per audit objection for Rs.85,640/- which was required to be recovered from the petitioner.

I have perused the record and heard the parties

Since the petitioner has already been released pension and is getting the same, to that extent the petition is rendered infructuous. The issue in dispute remains whether merely on the basis of audit objection recoveries can be effected from the petitioner on account of fixation of salary w.e.f. 1.1.1978 to 31.3.2001 and similarly whether the recoveries can be effected of the alleged embezzlement amount of Rs.85,640/- on the basis of audit para. This Court is of the view that merely on the basis of audit para recoveries cannot be effected from the petitioner amounting to Rs.62,540.10. The only procedure known to the law for effecting the recoveries on the basis of wrong fixation of salary is to issue show cause notice to the employee. Thereafter on the basis of reply furnished by an employee the orders can be passed directing the recoveries that too after due application of mind. Similarly, no recoveries can be effected either from the salary or retrial benefits accrued to the petitioner on the basis of audit objection pertaining to the alleged embezzlement of Rs.85,640/-.

The principles of natural justice are to be followed if any recovery is to be made on the basis of alleged embezzlement. The other aspect which cannot be lost sight of by this Court is that the petitioner has already superannuated and at this belated stage no recoveries can be effected from the retrial benefits of the petitioner and even the disciplinary proceedings, if any, under contemplation are misconceived.

Accordingly, the writ petition is allowed. The respondents are directed not to effect any recoveries from the petitioner's retrial benefits on the basis of audit objections. The respondents are also restrained from initiating departmental proceedings after permitting the petitioner to superannuate. There shall be no order as to costs.

(Rajiv Sharma)
Judge

April 18, 2007.
(sck)